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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,408	07/26/2001	Jochen Bollaender	1697	7027

7590 01/23/2003

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EXAMINER

HARRIS, STEPHANIE N

ART UNIT

PAPER NUMBER

3636

DATE MAILED: 01/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/915,408	BOLLAENDER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Stephanie N. Harris	3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 November 2002.

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-11 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-11 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 26 July 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Patel et al. (USPN 5379978).

Patel et al. discloses a holding device for a beverage container that can be installed in an arm rest (Abstract). The holding device comprises a carriage (24) that is guidable as a drawer and can be displaced back and forth between a pushed-in and pulled out position (Abstract). A beverage container can be inserted in the pulled out position as seen in Figure 2. A guide means is used for guiding the carriage during its displacement between the pushed-in and pulled out positions (Col2 lines 59-68- Col. 3 line 1). A gravity locking device (32,54) is used to lock the carriage in the pushed in position.

Regarding claims 2, 3, and 4 the gravity locking device has a locking member, which moves into a locked position when the carriage is in the pushed in position (Col. 4, lines 25-36). The gravity device also has a locking member, which moves into an unlocked position when the carriage is in the pulled out position (Col. 3, lines 43-52). The locking member can be displaced at a slant relative to the directional placement of the carriage (Col. 4, lines 32-34).

Regarding claims 5-8, the holder has an insertion opening as seen in Figure 1. The holder is raisably guided on the carriage so that when the carriage is pulled out, the holder is raised and when the carriage is pushed in, the carriage is lowered back onto the carriage (Abstract). The guide means for raisably guiding the holder on the carriage is formed so that a path of raising the holder is oriented upwards in relation to the carriage and contrary to the pulled out position (Abstract). When pulling out the carriage, the holder can travel a shorter distance in the carriage pulled out direction of the carriage because the holder is raised upwardly. The holder can also travel no distance in the carriage pulled out direction of the carriage because the holder is raised upwardly. The guide means of the holder has a four lever mechanism. The carriage forms one lever and the holder forms an opposite lever of the four said lever. Links (42, 50) comprise the remaining two levers as seen in Figure 3.

Claims 1, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Lancaster et al. (USPN 5897089).

Lancaster et al. discloses a holding device for a beverage container that can be installed in an arm rest (Abstract). The holding device comprises a carriage (34) that is guidable as a drawer and can be displaced back and forth between a pushed-in and pulled out position (Abstract). A beverage container can be inserted in the pulled out position as seen in Figure 2. A guide means (38) is used for guiding the carriage during its displacement between the pushed-in

and pulled out positions as seen in Figure 3. A gravity locking device (46) is used to lock the carriage in the pushed in position as seen in Figures 4 and 5.

Regarding claims 9 and 10, Lancaster et al. discloses a holding device (22) with an insertion opening as seen in Figure 3. The holder has an adjusting element (102), which movably mounted on the holder so that the size of the insertion opening is adjustable. The holder also has a securing device (90) with a catch device (96) for the adjusting element as seen in Figures 4 and 5.

***Response to Arguments***

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a gravity locking device that is comprised of a bolt, parts of the carriage can be locked in dependence) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to Applicant's argument that Patel does not disclose what prevents the carriage from being extensible upward from the housing, the Examiner respectfully disagrees. The gravity locking device (32,54) is enacted when abutment (56) is moved into housing (12). This action can only take place when the abutment surface contacts structure (14) and thus forces the spring to contract, which pivots the gravity locking device (32,54) into the housing. The gravity locking device is connected to the holder (38). When the holder is inserted into the housing this is the locked position. The holder can only be placed into the locked position when abutment (56) is moved into housing (12), thus this is the feature, which prevents the carriage from being extensible in this position. Furthermore the carriage can only be extensible by removing the abutment (56) from the housing (12), and this is what causes the holder and carriage to be in the unlocked position.

In response to Applicant's argument that Lancaster et al. fails to disclose that spring 46 is a gravity locking device, the Examiner respectfully disagrees. The holder (12) can only be stored into housing (10) when the spring (46) is positioned axially beyond the end of ratchet (96). If the spring (46) is not positioned axially beyond the end of ratchet (96), the holder will remain in the unlocked position, which extends outwardly from the carriage. Additionally, the slider plate can only be pulled out from the housing when spring (46) is positioned axially beyond the end of ratchet (96), which is achieved by moving

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the slider plate. Once the slider plate is moved, gravity is enacted on the spring and it is positioned axially beyond the end of ratchet.

In response to applicant's argument that the gravity locking devices of Patel and Lancaster et al. perform other functions for the holding device, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie N. Harris whose telephone number

is 703-305-1838. The examiner can normally be reached on Monday-Friday from 9am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo, can be reached on (703) 308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

SNH

January 19, 2003



Peter M. Cuomo  
Supervisory Patent Examiner  
Technology Center 3600